

LICENSE AGREEMENT

THIS AGREEMENT is made by and between MICHIGAN TECHNOLOGICAL UNIVERSITY of Houghton, Michigan ("MICHIGAN TECH") and Washington County ("Licensee"), and is effective as of _____ ("Effective Date").

1. License Granted.

- a. In consideration of the fees set forth in Article 2, and subject to the terms of this Agreement, MICHIGAN TECH agrees to grant and hereby does grant to Licensee a non-exclusive, non-transferable right and license to use computer software titled "RoadSoft," a specification of which is attached hereto as Exhibit 1 ("Program").
- b. Licensee may: install the Program on as many computers owned, leased or otherwise controlled by Licensee as Licensee deems necessary for Licensee's internal business purposes.
- c. Licensee may not use the Program for any purpose other than set forth in Sections 1.a and 1.b above. Without limiting the foregoing, and for the purpose of example only, Licensee may not: (i) reverse engineer, decompile or disassemble the Program in object code form or merge any part of the Program into another computer program; (ii) rent, sell, sublease, sublicense, assign, transfer or otherwise share any of Licensee's rights in the Program under this Agreement; (iii) remove or alter any copyright notice, labels or other trademarks from the Program or other materials received from MICHIGAN TECH; or (iv) make all or any part of the Program available to a third party including but not limited to consultants without MICHIGAN TECH's prior written consent.

2. License Fees

- a. Licensee will pay to MICHIGAN TECH an up-front license fee of \$3,300 within five (5) days of the Effective Date.
- b. Licensee will pay to MICHIGAN TECH an annual renewal fee of \$1,100 prior to each anniversary of the Effective Date.

3. Title.

- a. This Agreement does not constitute a sale of the Program; title and all copyrights to the Program and any copy made by Licensee remains the sole property of MICHIGAN TECH.
- b. Any suggestions or requests made to MICHIGAN TECH by Licensee with respect to the Program will be incorporated into the Program at MICHIGAN TECH's sole discretion, and will be owned by MICHIGAN TECH as part of the Program.

4. Licensee Responsibilities

- a. Licensee shall be solely responsible for the management and control of its use of the Program, including but not limited to, determining the appropriate use and limitations of the Program in Licensee's business and assuring operation of the Program by qualified, trained personnel.
- b. Licensee shall be solely responsible for the accuracy and completeness of the data used with the Program, and shall be solely responsible for ensuring that the data conforms to the format required by the Program.

5. Representations and Warranties

- a. MICHIGAN TECH warrants that the media on which the Program is furnished will be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery. This limited warranty is contingent upon proper use of the Program and does not cover a Program which has been modified or subjected to unusual physical, thermal, electromagnetic, electrical, or other stress.
- b. MICHIGAN TECH represents that it owns the Program and that it has the right to grant the license granted herein. MICHIGAN TECH represents that, to the best of the undersigned's knowledge, the Program (in the form originally provided by MICHIGAN TECH to Licensee) does not infringe any copyright of any third party at the time MICHIGAN TECH provides the Program to Licensee.
- c. THE REPRESENTATIONS AND EXPRESS WARRANTIES SET FORTH IN PARAGRAPHS 5.a AND 5.b ABOVE ARE THE ONLY REPRESENTATIONS AND WARRANTIES MADE BY MICHIGAN TECH TO LICENSEE WITH RESPECT TO THE PROGRAM. MICHIGAN TECH MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR ARISING BY CUSTOM OR TRADE USES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR WARRANTIES THAT THE PROGRAM IS FREE FROM ERROR OR THAT USE OF THE PROGRAM WILL BE UNINTERRUPTED.

6. Limitation of Liabilities

- a. MICHIGAN TECH's liability for actual damages of Licensee for any cause whatsoever and Licensee's remedy regardless of the form of action, whether in contract, tort or otherwise, arising out of or in connection with the Program shall be limited to reimbursement of the license fee paid to MICHIGAN TECH for the then-current license year. Licensee acknowledges that the amount paid by Licensee to MICHIGAN TECH for use of the Program is insufficient for MICHIGAN TECH to undertake any greater risk.
- b. IN NO EVENT SHALL MICHIGAN TECH BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE PROGRAM, INCLUDING

DAMAGES RESULTING FROM LOSS OF USE OF THE PROGRAM, LOSS OF DATA, LOSS OF REIMBURSEMENTS OR LOSS OF BUSINESS, EVEN THOUGH MICHIGAN TECH MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Maintenance/Support/Upgrades

- a. The Program is licensed as-is; MICHIGAN TECH will, at its own discretion provide telephone technical support, maintenance and upgrades to the Program, for a period of one year from the Effective Date of this Agreement, provided that Licensee complies with the requirements of the Agreement including payment provisions of Article 2 however MICHIGAN TECH is not obligated under this Agreement to provide any maintenance, support, or upgrades to the Program.
- b. If Licensee wishes to arrange for technical support for over and above that provided in Article 7.a, or training at the Licensee's location, Licensee may negotiate a separate agreement governing the terms of such technical support or training and Licensee's compensation to MICHIGAN TECH for such support.

8. Terms; Termination

- a. This Agreement is effective as of the Effective Date and will remain in effect until terminated by Licensee with thirty (30) days prior written notice to MICHIGAN TECH, unless terminated sooner by MICHIGAN TECH as provided in Sections 8.b or 8.c.
- b. MICHIGAN TECH may terminate this Agreement by giving written notice in the event Licensee makes unauthorized copies of the Program or otherwise fails to comply with any of the terms and conditions of this Agreement.
- c. MICHIGAN TECH may, at its sole option, terminate this Agreement with written notice to Licensee of failure to make any fee payment under Article 2, and such notice of termination will be effective thirty (30) days following the date thereof if Licensee fails to provide such payment.
- d. The fees paid under Article 2 are not refundable in the event of termination; there is no obligation on MICHIGAN TECH's part to refund any pro-rata portion of the annual fees for the remainder of the license year following termination.

9. Notices. All notices, invoices, communications, and payments required or permitted hereunder will be deemed given when received or refused, provided the noticing party sends such notices to the addresses or fax numbers set forth below for the receiving party:

If to Licensee:

Ron Whitehead, Director of Public Works
Washington County

197 E. Tabernacle
St. George, UT 84770
Telephone: 435-634-5780

If to MICHIGAN TECH:

Robin Kolehmainen
Technology and Economic Development
Michigan Technological University
1400 Townsend Drive
Houghton MI 49931
Telephone (906) 487-2228
Fax (906) 487-1979

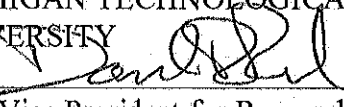
10. General Provisions

- a. This Agreement is not assignable by Licensee without prior written consent of MICHIGAN TECH, which consent will not be unreasonably withheld. Any attempt by Licensee to assign or transfer or sublicense any of its rights, duties or obligations under this Agreement, without written consent of MICHIGAN TECH, shall be null and void.
- b. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- c. Waiver by either party of any particular breach or default by the other shall be construed as being applicable only to such particular breach or default and shall not be construed as a waiver of any other provisions in this Agreement or of any subsequent breach or default.
- d. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and proposals, oral or written. No modification to this Agreement shall be binding upon the party against whom the enforcement of such a modification is sought unless it is made in writing, referring to this Agreement, and is executed by such party.
- e. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

LICENSEE

By _____
Title _____
Date _____

MICHIGAN TECHNOLOGICAL
UNIVERSITY

By  _____
Title Vice President for Research
Date 12-16-09